

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GAREY E. LINDSAY, Regional Director of the Ninth
Region of the National Labor Relations Board, For
and On Behalf of the NATIONAL LABOR
RELATIONS BOARD,
Petitioner,

Case No. 1:18-mc-0026
Barrett, J.
Litkovitz, M.J.

vs.

KOCH FOODS OF CINCINNATI, LLC,
Respondent.

ORDER

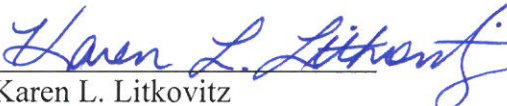
This matter is before the Court on the National Labor Relations Board (NLRB)'s motion to compel Koch Foods Of Cincinnati, LLC (Koch Foods), to obey a subpoena duces tecum in connection with an unfair labor practice investigation currently pending before the Board (Doc. 1) and Koch Foods' memorandum in opposition (Doc. 5). At issue is whether the NLRB is entitled to an unredacted version of email correspondence exchanged between Koch Foods employees Annette Crespo and Brian Reisen on May 21, 2018. Koch Foods alleges that the redacted portions of the email exchange are protected by the attorney-client privilege. (Doc. 5).

On December 3, 2018, the Court ordered Koch Foods to produce for *in camera* inspection the unredacted communications Koch Foods withheld based on the assertion of the attorney-client privilege. (Doc. 9). Koch Foods has complied with the Court's Order and the Court has reviewed both the redacted and unredacted versions of the email exchange *in camera*. The Court finds that the redacted portions of the email exchange are protected by the attorney-client privilege as they discuss legal advice from Rusty Gray, counsel for Koch Foods, regarding the employment of an individual who is the subject of an unfair labor practice charge proceeding pending before the NLRB. *See Upjohn Co. v. U.S.*, 449 U.S. 383, 394 (1981) (applying

attorney-client privilege in corporate context). *See also Graff v. Haverhill N. Coke Co.*, No. 1:09-cv-670, 2012 WL 5495514, at *8 and *14 (S.D. Ohio Nov. 13, 2012) (email communication relating advice of counsel from one employee to another protected by attorney-client privilege). Therefore, the NLRB's motion to compel is **DENIED**.

IT SO ORDERED.

Date: 12/11/18


Karen L. Litkovitz
United States Magistrate Judge